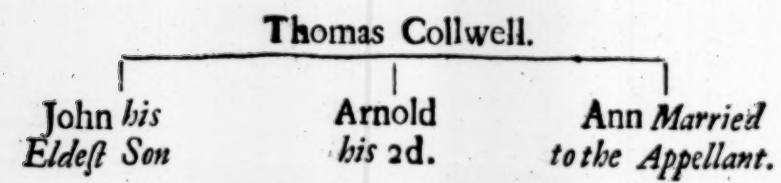


The Case of James Zouch Esq;



Lady Wilde ex par. Anne } Plain. Agt. Collwell,
the Wife of James Zouch } } Pilkington, & al. } Defend. Et Collwell & al. Plain.
Against Zouch & Ux. Def.

THE Appellant James Zouch having Married Ann the Daughter of Thomas Collwell Esq; there hapned a Difference between them; so that they parted. And the said Ann sued the Appellant in the Spiritual-Court for Ally-money. To put an end to which Suit, there was an Agreement made between all Parties interested, that the Appellant should allow her 250 l. per Annum, for her Maintenance. For payment whereof the Appellant did demise to the said Thomas Collwell and John Collwell his Son, several Lands in the County of Southampton for Ninety Nine Years. Which they redemised to the Appellant, subject to the payment of 250 l. per Annum. And the said Collwell gave the Appellant a Bond of 2000 l. penalty to secure him from any further demand of Ally-money by his Wife, and all other Damages she should do him.

That afterwards the Appellant and his Wife were reconciled, and cohobited together. And by the Agreement of the Wife and her Friends, the Allowance of 250 l. per Annum, was to be suspended during such cohobitation; which continued till within this two or three Years: And then the Appellant's Wife without any just pretence went away from him, and took with her Plate, Jewels, &c. to a very great value.

That Thomas Collwell made his Will; and thereof Elizabeth his Wife, John his Son, and Daniel his Brother, Executors, and died.

That after John Collwell made his Will; and thereof Elizabeth his Mother, his Uncle Daniel, and Sir Thomas Pilkinton Executors: And devised to them all his Personal Estate, in Trust to pay Debts and Legacies. Amongst which Legacies he gave to his Sister Zouch the Appellant's Wife, one Annuity of 100 l. per Annum, remainder to be laid out in a Purchase of Lands; in Trust for the Eldest Son of his Brother Arnold Collwell, when he should come to the Age of Twenty One Years. And the Profits in the mean time to be applied to raise Portions for the younger Children of his said Brother, and died. Elizabeth the Mother only proved the Will: The other two Executors refusing. And she by Deed, transferred all the Estate of John Collwell to William Longvill and Charles Bonython Esquires, and Richard Spoure Gent. the Respondents, subject to the performance of John Collwell's Will: And then made her Will; and the said Mr. Longvill and Bonython her Executors, and died.

After whose death, the Appellant's Wife, being separate from him, did by Dame Frances Wild her next Friend, prefer her Bill in Chancery against all the said Persons concerned in John Collwell's and Elizabeth Collwell's Estate, to have the said 100 l. per Annum paid her: It being given her by her Brother, to her separate use. In Answer to which Bill, the Defendants confessed the Legacy and Assets: and submitted to pay it, if the Court of Chancery would so order.

Upon which Proceedings, the Children of Arnold Collwell exhibited their Bill against the Appellant and his Wife, and suggested that the Appellant's Wife had 250 l. per Annum secured to her upon Lands in Hampshire: which was sufficient for her Maintenance. And that the Legacy of 100 l. given by her Brother, was a discretionary Legacy, and not to be paid her, unless her Brother's Executors should see it necessary. And alledged, this last separation between the Appellant and his Wife, was by combination between them; that she might have a pretence of Necessity to demand this 100 l. per Annum. And that her carrying away the Plate and Jewels, &c. was a Contrivance between them, to subject Thomas and John Collwell's Estate to the payment of the 2000 l. Bond. And prayed Relief against these supposed Contrivances, and against any Suit on the Bond.

In Answer to which Bill, the Appellant and his Wife by their several Answers, denied there was any such Contrivance or Combination between them, as the Bill suggests. And as to the Bond of 2000 l. the Appellant set forth, that he had mislaid it, and that he never intended to put it in Suit for any thing his Wife had done. But that he expected to have the Plate, &c. again, (which she had taken away) before he paid her the 250 l. per Annum.

Upon these Answers, the Plaintiff set down the Cause to be heard. And both these Causes coming to be heard the 10th of February last, before the Lords Commissioners for the Great Seal: They declared that the Arrears of the 250 l. per Annum, and the growing payments ought to be paid to the Appellant's Wife. And that she should return upon Oath, what Plate, Jewels, &c. she had taken from him: Except what had been given her by her Friends. And directed a Master to take the Account. Upon which Reference, the Master reported Ex parte without any Proof 812 l. 10 s. due to the Appellant's Wife: Upon which Report, there is a Decree made against the Appellant, that he should pay the same. And charged the Land Redemised therewith.

By which Decree, the Appellant conceives himself aggrieved in these Points following.

- 1st. For that there was no Equity to Decree the Appellant to pay the 250 l. per Annum: (Nor was there any such Decree desired by either of the said Bills:) But if any thing was due, it was properly determinable at Law, upon the Demise and Redemise of Lands for that purpose.
- 2ly. For that by the Decree, the Appellant's Person and all his Estate both real and personal is subjected to the payment of the 812 l. 10 s. (Reported Arrears of the 250 l. per Annum) and the growing Payments of the 250 l. per Annum. Although the Lands Demised and Redemised were only charged on his giving that security.
- 3ly. For that the Order on hearing, directed the Master to take an Account of the Arrears of the 250 l. per Annum, and he reported 812 l. 10 s. Arrear. When as it was not examinable in either of the Causes whether the 250 l. per Annum were paid or not. The payment of it not being desired by either of the Bills: the Appellant being no Party to the Cause wherein the Lady Wilde was Plaintiff. And the other Cause being brought to Hearing upon the Appellant's Answer, without any Sub-pena to rejoyne. So that there could be no Evidence given, either for him or against him, but what was contained in his Answer. And if the Master had charged twice as much in Arrear, the Appellant could not help himself: for the Master could take no Evidence of Payment.
- 4ly. For that the Executors of Thomas and John Collwell were no Parties to the Decree, and so not bound by it, and may proceed at Law, and recover the Arrears of the 250 l. per Annum against the Appellant, notwithstanding he should pay it on this Decree. So that by this Decree, he is subjected to a double payment of it.
- 5ly. For that it doth not appear in either of the Causes what Lands were charged by the Demise and Redemise, with the Payment of this 250 l. per Annum. And yet the Injunction for possession requires the Appellant to deliver the Possession of several Lands particularly mentioned. So that the Injunction is beyond the Decree; and could never affect any Lands, if the Decree were just: it being uncertain to what Lands it should extend.
- 6ly. For that the Appellant being a Defendant, is Decreed to pay Money to another Defendant, which ought not to be. And for that, there is no Provision made for deduction for Taxes out of the 250 l. per Annum.
- 7ly. For that by the Decree, the Appellant is to be concluded by his Wife's Oath as to the Plate and Goods she carried away. And whatever she had of the Gift of any Person, she is to keep: though all such things given the Wife, do belong to the Husband, unless he be excluded by the Donor from meddling therewith, which doth not appear in this Case, and cannot be presum'd, being against common Right.

For which Reasons, the said James Zouch has Appealed against the said Decree, to the Lords Spiritual and Temporal, in Parliament Assembled: And prays that the same may be Reversed.

the form may be resolved.